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RUEHFK/AMCONSUL FUKUOKA 1544
RUEHKS/AMCONSUL SAPPORO 2110
RUEHIN/AIT TAIPEI 7231
RUHBABA/CG III MEF CAMP COURTNEY JA
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RUEKJCS/CJCS WASHINGTON DC
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C O N F I D E N T I A L SECTION 01 OF 07 TOKYO 003458

SIPDIS

DOD FOR OSD/APSA SHIVERS/SEDNEY/HILL; DEPT OF NAVY FOR
SECNAV WINTER, ASN PENN, DASN BIDDICK; DON PASS TO JGPO FOR
BICE/HICKS; NSC FOR WILDER; PACOM FOR J00/J01/J4/J5; USFJ
FOR J00/J01/J4/J5

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SUBJECT: PART 2 OF 2 -- U.S., JAPAN REACH AD REF GUAM
INTERNATIONAL AGREEMENT

REF: STATE 128612

Classified By: Ambassador J. Thomas Schieffer; Reasons: 1.4 (b/d)

Please see Tokyo 03457 for part 1 of this cable.

¶14. (C) Given this ambiguity and concern that the numbers 8,000/9,000 cited in public documents continues to be misunderstood and misconstrued, the U.S. side pushed to use the phrase ""and associated dependents"" in place of ""and their approximately 9,000 dependents."" The Japanese side objected strongly to this approach. Japanese negotiators registered frustration with over two years of U.S. inability to provide more detailed data on the actual number of dependents associated with the AIP units that will relocate to Guam, and voiced suspicion that the U.S. intends to hold on to excessive housing in Okinawa and force Tokyo to build more housing in Guam than is required. The U.S. side explained that the focus is on the units and capabilities that will move to Guam, and that regardless of the actual manning of those units, the U.S. remains committed to relocating those units to Guam. All dependents associated with those units will also relocate. The actual number may be 8,000 by the time of relocation, but most likely will be less than the full authorized manning. Likewise, the remaining forces on Okinawa may be 10,000, but most likely will be less than the full authorized manning. The Japanese side agreed to this

basic concept, but stressed it fully expects that the facilities and areas associated with the capabilities that move to Guam will be accounted for in the subsequent consolidation efforts. The U.S. side did not commit to such a direct linkage between specific units relocating to Guam and consolidation and land returns. Both sides agreed that the issue of actual versus notional numbers as well as implications for consolidation and land return require greater focus in the near-term. However, because the U.S. is not able to provide any additional level of clarity on the transfer personnel and their associated dependents, highlighting changes in the number of personnel in the IA would create significant risk for the Japanese government. Japanese negotiators said that any effort by the U.S. side to change the referenced numbers without providing more detailed personnel data would be a "deal breaker."

¶15. (C) Scope of Funding: In earlier drafts, the IA's scope included not only Japan's cash contributions, but also Japanese funding commitments for housing and utilities via equity participation and loans. However, bilateral discussions on implementing the Special Purpose Entities (SPE) that will execute Japan's funding commitments for housing and utilities remain preliminary and may ultimately be resolved in the SPE Implementing Guidance and Operating Agreements (vice an International Agreement) that will be executed by the SPE participants. Although the negotiators agreed to remove housing and utilities from the scope of the agreement, there was sufficient discussion to identify key

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areas to be addressed bilaterally to ensure the smooth implementation of housing and utility programs in the future:

(1) the two sides have different understandings of Japan's obligated ratio of equity to loans; and (2) the MOD insists it can provide preferential treatment to Japanese companies competing for housing and utility contracts under the SPE, but the U.S. side seeks a level-playing field for U.S. companies. (Note: the issue of the meaning of "recoverability" was not discussed as part of the IA negotiations, but is also a known area of disagreement.)

¶16. (C) Guam versus Commonwealth of Northern Marianas Islands (CNMI): The U.S. proposed using language to reference the CNMI (rather than the more limiting Guam) in Article 1. The U.S. made the point that there may be projects that Japan's cash contributions may fund that support training facilities in the CNMI. Japanese negotiators expressed concern that at no time in the program management discussions has the U.S. side identified any projects off Guam and elsewhere in CNMI, so they would not be able to explain this expanded scope to Diet members. As a compromise, the two sides agreed to remove Japan's proposed language in Article 1 that specified that Japan's cash contributions would be for facilities "on Guam." The final language in Article 1 does not state where facilities to support the Relocation will be built. As such, that language does not preclude cooperation in the CNMI, but does not explicitly identify cooperation outside of Guam as part of the scope. In a pull aside, Embassy of Japan Political First Secretary Masaaki Kanai confirmed that Japan's domestic law governing realignment implementation could potentially be reinterpreted or revised to allow cooperation in the CNMI.

¶17. (C) Japanese Obligation to Address Shortfalls: Responding to proposed U.S. language, the Japanese side agreed to language that obligates it to take action to address funding shortfalls when appropriate. However, this language was moved to the Implementing Guidelines (3.f.) instead of the International Agreement.

Article 2

¶18. (C) The purpose of Article 2 is to highlight U.S.

obligations. Like the Government of Japan obligations in Article 1, the U.S. obligations are subject to caveats, highlighted later in Article 9. Additionally, the Ministry of Finance (MOF) remained concerned that, despite Article 2 obligations, the U.S. would not move to Guam even if the FRF had been completed and the Guam facilities were ready to receive the U.S. Marines Corps personnel. The MOF requested, and received, an oral statement from the U.S. negotiator that "Once the FRF and required facilities and infrastructure on Guam are complete, the U.S. shall complete the Relocation." The MOF accepted this statement as a quid pro quo for

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dropping its insistence on special tax exemptions for Japan's cash contributions.

Article 3

¶19. (C) The purpose of Article 3 is to document the clear linkage between the FRF and Guam program. The Japanese side originally pressed to eliminate all references to the FRF. When the U.S. insisted on FRF linkages, Japanese negotiators tried to get the U.S. to introduce new language committing the U.S. to cooperate for the FRF's completion. The U.S. side did not accept the Japanese language, stressing that an overstatement of the role the U.S. plays in the FRF could create confusion in the context of the lawsuit "Center for Biological Diversity v. Gates," where the clear Japanese government lead in finalizing the FRF is a key tenet of the U.S. defense. Moreover, a strong obligation by the U.S. to cooperate toward the completion of the FRF could be construed as an opening to renegotiate the location of the runway to satisfy Okinawa Governor Nakaima's political requests. However, the U.S. side accepted the reference to "close cooperation with the Government of the United States of America" in the final language since this formulation maintained the Japanese government as the lead actor for completing the FRF. The inclusion of Article 3, as well as the specific language of Article 3, required Prime Minister Taro Aso's personal approval.

Article 4

¶20. (C) The purpose of this Article is to assure the Japanese government that the USG would not use Japanese cash contributions for anything other than the original purpose.

Article 5

¶21. (C) The purpose of Article 5 is to capture U.S. efforts to maintain a level playing field for Japanese companies competing for contracts funded by Japan's cash contributions. In early discussions, the U.S. proposed including the caveat "in accordance with applicable laws and regulations" to make clear that the USG cannot guarantee equal treatment should the U.S. Congress pass new laws that undermine the existing arrangements. However, the U.S. side reminded Japanese negotiators of the number of actions the U.S. side has taken since May 2006 to create a framework for equal treatment and to explain the political importance of equal treatment to key Congressional members and staffers. The Japanese side insisted that if the U.S. retained the caveat "in accordance with applicable laws and regulations," the Japanese

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government, at the highest levels, would not support the agreement and would, at a minimum, insist on a statement in Article 1 that Japanese funding is subject to equal treatment

by the United States. The U.S. negotiators reminded the Japanese side that the U.S. never guaranteed Japan a level playing field, but only committed to make "best efforts."

¶22. (C) Given the critical importance to Japan domestically, the U.S. agreed to remove the caveat "in accordance with applicable laws and regulations" from Article 5 after making a clear statement that even without an explicit statement, all U.S. actions will be undertaken in accordance with applicable laws and regulations. Removal of this caveat does not change the fact that the U.S. will only act in accordance with laws and regulations. Japanese negotiators explicitly stated that they understood that it is natural that all countries can only act in accordance with their laws and regulations. However, they also said that should the U.S. fail to maintain equal treatment of Japanese companies, the Japanese government will cease funding under this International Agreement. The U.S. side restated that it has not agreed that equal treatment is a prerequisite for Japan's cash contribution, but took note of the high importance the Japanese side placed on equal treatment and agreed to, as has been the case since May 2006, make best efforts to maintain equal treatment. The U.S. side added that should the Japanese side choose to cease its contributions, the U.S. would no longer be obligated to complete the facilities in Guam or relocate from Okinawa to Guam, per Articles 2 and 9.

Article 6

¶23. (C) The purpose of Article 6 is to give more authority to the Implementing Guidance, which was drafted in parallel with the IA, and which will be signed by MOD and DOD program leads subsequent to the IA's entry into force. The IG goes into greater detail on implementation, especially ensuring sufficiently flexible use of funds for program management. The Japanese side pressed for indirect references to the IG to avoid Diet attention. The U.S. side made clear that we would share the draft IG with Congress and that the IA and IG constitute a complete package.

Article 7

¶24. (C) The purpose of Article 7 is to lay out key characteristics of the funding mechanism, although most details are further outlined in the IG. Para 2 clarifies that Japan's contribution will be measured in constant US Fiscal Year 2008 dollars by laying out a discount methodology, and characterizes the index that will be used;

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separately the Japanese agreed to the U.S.-proposed Engineering News Building Cost Index. U.S. negotiators pressed the Japanese side to commit explicitly to transfer funds annually within 60 days of Diet authorization. Instead, they decided as an effectively equivalent solution, the combination of a Foreign Minister statement at the time the IA is signed committing to exchange notes as soon as possible each year to facilitate timely transfer, along with the MOD's commitment to transfer funds within 30 days of the annual exchange of notes, as referenced in paragraph 3 of the IG.

Article 8

¶25. (C) The purpose of Article 8 is to address Japanese concerns that the U.S. will make unilateral force structure decisions (e.g., in the context of BRAC) that affect the Japanese-funded facilities. During May 2006 Roadmap discussions, the U.S. told the Japanese government that the

USG cannot make any commitments about the long-term presence of U.S. forces in Guam. The language in this Article does not commit the USG to anything more than the consultations that would arise in due course among allies.

Article 9

¶26. (C) The purpose of Article 9 is to lay out the disclaimers that both the Government of Japan and USG have for their commitments in Articles 1 and 2 respectively. Paragraph 1 is Japan's disclaimer that it will not fund the program unless the U.S. also takes necessary measures. The real focus of this disclaimer is to hedge against the risk Japan is taking of "going first" on funding. If the Japanese government transfers funds to the USG in 2009 prior to Congressional action to pass the U.S. FY 2010 MILCON budget for Guam, and Congress subsequently does not pass the Guam budget, the Japanese intends to ask for its unused funds to be returned, consistent with Article 7. The caveats in paragraph 2 capture the key conditions for U.S. funding and actions to complete the Relocation. As is necessary in an executive agreement, the U.S. includes the caveat "subject to the availability of funds for the Relocation." Moreover, the U.S. clearly links the U.S. Guam actions to progress on the FRF, as well as Japan's financial contributions "as stipulated in the Roadmap" (which refers not only to cash contribution, but also funding for housing and utilities, for a total USD 6.09 billion commitment).

Article 10

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¶27. (C) The purpose of Article 10 is to include generic consultation language that Japan requires in all International Agreements.

Article 11

¶28. (C) The purpose of Article 11 is to clarify the mechanism and timeline for bringing this agreement into force.

Exchange of Notes (EON) and Annex

¶29. (C) The purpose of the EON is to initiate the JFY 2009 funds transfer. There will be annual EONs to reflect projects and budget associated with the program. Language in para 1 makes clear that the funds will be provided in JFY ¶2009. This reflects Japan's retreat from earlier positions that it needed to either use incremental funding or split funding. The Annex of the EON updates the clarification of each project. By grouping the design projects into a single "project" for the purposes of the EON, the Japanese government gives the U.S. program managers more flexibility in implementation. By breaking up the Utilities and Site Improvements (U&SI) project into three discrete projects, the U.S. will need to exercise additional coordination with the Japanese side to adjust funds between projects. However, MOD implementation lead Marui made clear that he will be authorized to assent to such funding adjustments and pledged his full cooperation in accommodating flexible movement of funds among projects as necessary. He cautioned, however, that insistence by the USG that the US&I projects be grouped together would be a "deal breaker."

Negotiating Teams

130. (SBU)

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